Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

24 June 2015*

(Appeals — European Regional Development Fund (ERDF) — Reduction of financial assistance — Method of calculation by extrapolation — Procedure of adoption of the decision by the European Commission — Failure to comply with the time-limit laid down — Consequences)

In Case C-263/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 May 2013,

Kingdom of Spain, represented by A. Rubio González, acting as Agent,

appellant,

the other party to the proceedings being:

European Commission, represented by J. Baquero Cruz and A. Steiblytė, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, A. Borg Barthet, M. Berger and F. Biltgen (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, the Kingdom of Spain seeks to have set aside the judgment of the General Court of the European Union in *Spain* v *Commission* (T-65/10, T-113/10 and T-138/10, EU:T:2013:93, 'the judgment under appeal') dismissing its applications for annulment of Commission Decisions

* Language of the case: Spanish.

C(2009) 9270 of 30 November 2009, C(2009) 10678 of 23 December 2009 and C(2010) 337 of 28 January 2010 (together, 'the contested decisions') reducing the assistance from the European Regional Development Fund (ERDF) granted respectively under the operational programme 'Andalusia' falling within Objective 1 (1994-1999) pursuant to Commission Decision C(94) 3456 of 9 December 1994, the operational programme 'Basque Country' falling within Objective 2 (1997-1999) pursuant to Commission Decision C(1998) 121 of 5 February 1998, and the operational programme 'Comunidad Valenciana' falling within Objective 1 (1994-1999) pursuant to Commission Decision C(1994) 3043/6 of 25 November 1994.

Legal context

2 In accordance with Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1), '"[i]rregularity" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure'.

3 The first subparagraph of Article 3(1) of that regulation provides:

'The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.'

4 The ERDF was established by Regulation (EEC) No 724/75 of the Council of 18 March 1975 (OJ 1975 L 73, p. 1, corrigendum OJ 1975 L 110, p. 44), amended on several occasions and replaced from 1 January 1985 by Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund (OJ 1984 L 169, p. 1).

5 In 1988 the system of the Structural Funds was reformed by Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

6 Regulation No 2052/88, which entered into force on 1 January 1989, was to be re-examined by the Council, on a proposal by the Commission, by 31 December 1993.

7 That regulation was therefore amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5), which was itself to be re-examined by 31 December 1999.

8 Those regulations set up the Structural Funds (European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section, European Social Fund (ESF) and ERDF) intended to correct the principal regional imbalances within the European Union, in particular by promoting the development and structural adjustment of the regions whose development is lagging behind ('Objective 1') and converting the regions, frontier regions or parts of regions (including employment areas and urban communities) seriously affected by industrial decline ('Objective 2').

9 Article 7 of Regulation No 2052/88, as amended by Regulation No 2081/93, ('Regulation No 2052/88'), 'Compatibility and checks', provides in paragraph 1:

'Measures financed by the Structural Funds or receiving assistance from the [European Investment Bank (EIB)] or from another existing financial instrument shall be in conformity with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning the rules on competition, the award of public contracts and environmental protection and the application of the principle of equal opportunities for men and women.'

10 Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20), ('Regulation No 4253/88') provides in Article 23, 'Financial control':

'1. In order to guarantee completion of operations carried out by public or private promoters, Member States shall take the necessary measures in implementing the operations:

— to verify on a regular basis that operations financed by the Community have been properly carried out,

— to prevent and to take action against irregularities,

— to recover any amounts lost as a result of an irregularity or negligence. Except where the Member State and/or the intermediary and/or the promoter provide proof that they were not responsible for the irregularity or negligence, the Member States shall be liable in the alternative for reimbursement of any sums unduly paid. …

Member States shall inform the Commission of the measures taken for those purposes and, in particular, shall notify the Commission of the description of the management and control systems established to ensure the efficient implementation of operations. They shall regularly inform the Commission of the progress of administrative and judicial proceedings.

…

2. Without prejudice to checks carried out by Member States, in accordance with national laws, regulations and administrative provisions and without prejudice to the provisions of Article 206 of the [EEC] Treaty or to any inspection arranged on the basis of Article 209(c) of the Treaty, Commission officials or servants may carry out on-the-spot checks, including sample checks, in respect of operations financed by the Structural Funds and management and control systems.

…

3. For a period of three years following the last payment in respect of any operation, the responsible body and authorities shall keep available for the Commission all the supporting documents regarding expenditure and checks on the operation.'

11 Article 24 of Regulation No 4253/88, 'Reduction, suspension and cancellation of assistance', provides:

'1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or a measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

…'

12 In accordance with Article 11 of Council Regulation (EEC) No 4254/88 of 19 December 1988 laying down provisions for implementing Regulation No 2052/88 as regards the European Regional Development Fund (OJ 1988 L 374, p. 15), as amended by Council Regulation (EEC) No 2083/93 of 20 July 1993 (OJ 1993 L 193, p. 34), 'Monitoring of compatibility', '[w]here appropriate and through procedures suitable to each policy, Member States shall supply the Commission with information concerning compliance with the provisions of Article 7(1) of Regulation … No 2052/88'.

13 After consulting the Advisory Committee on the Development and Conversion of Regions and the committee provided for in Article 147 of the EC Treaty, and referring to Article 23 of Regulation No 4253/88, the Commission adopted a number of implementing regulations, including Regulation (EC) No 2064/97 of 15 October 1997 establishing detailed arrangements for the implementation of Council Regulation No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (OJ 1997 L 290, p. 1).

14 Article 8 of Regulation No 2064/97 provides:

'1. No later than at the time of the request for the final payment and the final declaration of expenditure in respect of each form of assistance, Member States shall present to the Commission a statement, … drawn up by a person or organisation functionally independent of the implementing service. The statement shall summarise the conclusions of the control examinations made in the previous years and provide an overall conclusion as to the validity of the request for the final payment and the legality and regularity of the operations underlying the final declaration of expenditure.

2. If the presence of important management or control weaknesses or the high frequency of irregularities encountered does not allow the provision of a positive overall assurance as to the validity of the request for final payment and the final declaration of expenditure, the statement shall refer to these circumstances and shall estimate the extent of the problem and its financial impact.

In such a case the Commission may ask that a further control be carried out with a view to the identification and rectification of irregularities within a specified period of time.'

15 On 15 October 1997 the Commission also adopted internal guidelines concerning net financial corrections in the context of the application of Article 24 of Regulation No 4253/88. In points 5 and 6 of the internal guidelines, the Commission states that, in derogation from the rule whereby every net financial correction must relate solely to the irregularity or irregularities discovered, provision is nevertheless made for a greater financial correction in cases where the Commission has good reason to believe that the irregularity was systemic, thus reflecting a systemic weakness of management, control or audit likely to be found in a series of similar cases. To make such a financial correction, the Commission proceeds by extrapolation, that is, it takes account of the level and the specific characteristics of the administrative system in which the weakness is present and the probable extent of the abuse.

16 Regulations No 2052/88 and No 4253/88 were repealed with effect from 1 January 2000 by Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

17 In accordance with Article 2(1) of Regulation No 1260/1999, it applies to the ERDF, the ESF, the EAGGF Guidance Section and the Financial Instrument for Fisheries Guidance (FIFG).

18 Under Article 39 of that regulation, 'Financial corrections':

'1. The Member States shall, in the first instance, bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or conditions for the implementation or supervision of assistance and making the financial corrections required.

The Member State shall make the financial corrections required in connection with the individual or systemic irregularity. The corrections made by the Member State shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the Member State for the assistance concerned, in compliance with the arrangements to be defined pursuant to Article 53(2).

2. If, after completing the necessary verifications, the Commission concludes that:

(a) a Member State has not complied with its obligations under paragraph 1; or

(b) all or part of an operation justifies neither part nor the whole of the contribution from the Funds; or

(c) there are serious failings in the management or control systems which could lead to systemic irregularities;

the Commission shall suspend the interim payments in question and, stating its reasons, request that the Member State submit its comments and, where appropriate, carry out any corrections, within a specified period of time.

If the Member State objects to the observations made by the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership make efforts to reach an agreement about the observations and the conclusions to be drawn from them.

3. At the end of the period set by the Commission, the Commission may, if no agreement has been reached and the Member State has not made the corrections and taking account of any comments made by the Member State, decide within three months to:

(a) reduce the payment on account … or

(b) make the financial corrections required by cancelling all or part of the contribution of the Funds to the assistance concerned.

The Commission shall when deciding the amount of a correction take account, in compliance with the principle of proportionality, of the type of irregularity or change and the extent and financial implications of the shortcomings found in the management or control systems of the Member States.

In the absence of a decision to do either (a) or (b) the interim payments shall immediately cease to be suspended.

…'

19 Regulation (EC) No 1783/1999 of the European Parliament and of the Council of 12 June 1999 on the European Regional Development Fund (OJ 1999 L 213, p. 1), which repealed Regulation No 4254/88, does not contain any provisions on financial corrections.

20 Article 5 of Commission Regulation (EC) No 448/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the procedure for making financial corrections to assistance granted under the Structural Funds (OJ 2001 L 64, p. 13), reads as follows:

'1. The period of time within which the Member State concerned may respond to a request under the first subparagraph of Article 39(2) of Regulation (EC) No 1260/1999 to submit its comments and, where appropriate, make corrections, shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.

2. Where the Commission proposes financial corrections on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the files concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the files concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1. The results of such examination shall be examined in the manner specified in the second subparagraph of Article 39(2) of Regulation (EC) No 1260/1999. The Commission shall take account of any evidence supplied by the Member State within the time limits.

3. Whenever the Member State objects to the observations made by the Commission and a hearing takes place under the second subparagraph of Article 39(2) of Regulation (EC) No 1260/1999, the three-month period within which the Commission may take a decision under Article 39(3) of that Regulation shall begin to run from the date of the hearing.'

21 Regulation No 1260/1999, which had to be reviewed by the Council by 31 December 2006, was repealed by Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (OJ 2006 L 210, p. 25), which, as stated in Article 1(1), applies to those funds without prejudice to the specific provisions laid down in the regulations governing each of those funds.

22 Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation No 1783/1999 (OJ 2006 L 210, p. 1) does not contain any provisions on the procedure relating to financial corrections which may be decided on by the Commission. The same is true of Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Regulation No 1083/2006 and Regulation No 1080/2006 (OJ 2006 L 371, p. 1).

23 Those financial corrections are the subject of rules common to the three funds, set out in Articles 99 to 102 of Regulation No 1083/2006.

24 Article 100 of Regulation No 1083/2006, 'Procedure', provides:

'1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity was less than the Commission's

assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in the first subparagraph.

2. The Commission shall take account of any evidence supplied by the Member State within the time limits mentioned in paragraph 1.

3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4. In case of an agreement, the Member State may reuse the Community funds concerned in conformity with the second subparagraph of Article 98(2).

5. In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.'

25 Article 108 of Regulation No 1083/2006, 'Entry into force', provides in its first two paragraphs:

'This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

The provisions laid down in Articles 1 to 16, 25 to 28, 32 to 40, 47 to 49, 52 to 54, 56, 58 to 62, 69 to 74, 103 to 105 and 108 shall apply from the date of entry into force of this Regulation only for programmes for the period 2007 to 2013. The other provisions shall apply from 1 January 2007.'

26 Regulation No 1083/2006 was repealed by Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ 2013 L 347, p. 320), Article 145(6) of which provides that '[i]n order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing[; t]he Commission shall take account of all information and observations submitted during the course of the procedure[; and, i]f no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission'.

27 In accordance with Article 154 of Regulation No 1303/2013, Article 145 of that regulation is to apply with effect from 1 January 2014.

28 Article 145 forms part of Part Four of Regulation No 1303/2013, which contains the general rules applicable to the ERDF, the ESF, the Cohesion Fund and the European Maritime and Fisheries Fund relating to management and control, financial management, accounts and financial corrections.

29 Neither Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ 2013 L 347,

p. 289) nor Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation No 1303/2013 (OJ 2014 L 138, p. 5) contains any provision on the procedure relating to financial corrections which may be decided on by the Commission.

Background to the dispute and the contested decisions

30 The facts of the present dispute, as set out in paragraphs 1 to 9 of the judgment under appeal, may be summarised as follows.

31 By decisions C(94) 3456 of 9 December 1994, C(98) 121 of 5 February 1998 and C(1994) 3043/6 of 25 November 1994, the Commission approved respectively the operational programmes 'Andalusia' falling within Objective 1 (1994-1999), 'Basque Country' falling within Objective 2 (1997-1999) and 'Comunidad Valenciana' falling within Objective 1 (1994-1999).

32 In the closure audits for those programmes, the Commission selected certain projects for checking. An examination of those samples was said to have disclosed numerous irregularities, some of which were recurrent and consisted essentially in infringements of the EU rules on public procurement and the rules applicable in connection with the Structural Funds. Those irregularities were classified as systemic by the Commission.

33 After various exchanges between the Commission and the Spanish authorities, the Commission decided to reduce the assistance from the ERDF for each of those operational programmes, by extrapolating to the entire programmes the systemic errors it considered that it had discovered in the examination of the samples.

34 More particularly, in the closure audit for the operational programme 'Andalusia', the Commission selected a random sample of 37 projects out of 5 319 in an amount of EUR 870 341 396, or 16.69% of the final expenditure declared, on the basis of monetary unit sampling and with the aid of Audit Command Language (ACL) software, a computer-assisted audit tool. The conclusions of the audit were communicated to the Spanish authorities in reports of 19 October 2004 and 10 April 2006. After various exchanges of observations and information between the Commission and the Spanish authorities, a hearing was held in Brussels (Belgium) on 2 and 3 July 2008. The hearing ended with an undertaking by the Spanish authorities to provide additional information on the admissibility of the operations concerned within three weeks. That additional information was submitted by letters of 22 July and 5 August 2008. The Commission sent its final conclusions to the Spanish authorities by letter of 19 March 2009. They replied by letter of 21 April 2009.

35 By Decision C(2009) 9270 of 30 December 2009, the Commission reduced by EUR 219334437.31 the ERDF assistance granted, in an amount of EUR 3323249050.16, in respect of the operational programme 'Andalusia'. That reduction corresponds to an extrapolation of the irregularities classified by the Commission as systemic to the entire operational programme.

36 In the closure audit for the operational programme 'Basque Country', the Commission selected a random sample of 37 projects out of 3 348 in an amount of EUR 266 765 981, corresponding to 36.98% of the final expenditure declared, using the same method that it had used for the operational programme 'Andalusia'. The results and the conclusions of the audit were communicated to the Spanish authorities in reports of 17 August 2005 and 24 September 2007. After various exchanges of observations and information, a hearing was held in Brussels on 22 and 23 January 2009. The hearing ended with an undertaking by the Spanish authorities to provide additional information on the admissibility of the operations concerned within three weeks. That additional information was sent by letter of 16 February 2009 and emails of 10, 23 and 24 February 2009. The Commission sent its final conclusions to the Spanish authorities by letter of 29 July 2009. They replied by letter of 15 September 2009.

37 By Decision C(2009) 10678 of 23 December 2009, the Commission reduced by EUR 27884692.27 the ERDF assistance granted, in an amount of EUR 301 152 434, in respect of the operational programme 'Basque Country'. That reduction corresponds to an extrapolation of the irregularities classified by the Commission as systemic to the entire operational programme.

38 In the closure audit for the operational programme 'Comunidad Valenciana', the Commission selected a random sample of 38 projects out of 7 862 in an amount of EUR 607075404.63, corresponding to 28.72% of the final expenditure declared, using the same method that it had used for the other two operational programmes. The results and the conclusions of the audit were communicated to the Spanish authorities in reports of 10 June 2004 and 10 April 2006. After various exchanges of observations and information between the Commission and the Spanish authorities, a hearing was held in Brussels on 4 and 5 November 2008. The hearing ended with an undertaking by the Spanish authorities to provide additional information on the admissibility of the operations concerned within three weeks. That information was communicated by letter of 24 November 2008. The Commission sent its final conclusions to the Spanish authorities by letter of 29 May 2009. They replied by letter of 3 July 2009 and an email of 7 July 2009.

39 By Decision C(2010) 337 of 28 January 2010, the Commission reduced by EUR 115612377.25 the ERDF assistance granted, in an amount of EUR 1298056426.49, in respect of the operational programme 'Comunidad Valenciana'. That reduction corresponds to an extrapolation of the irregularities classified by the Commission as systemic to the entire operational programme.

The actions before the General Court and the judgment under appeal

40 By applications lodged at the Registry of the General Court on 11 February 2010 (Case T-65/10), 8 March 2010 (Case T-113/10) and 24 March 2010 (Case T-138/10), the Kingdom of Spain brought actions for annulment of the contested decisions.

41 By order of the President of the Seventh Chamber of the General Court of 26 April 2010, the three cases were joined for the purposes of the written and oral procedure and the judgment.

42 In support of the actions, the Kingdom of Spain relied on four pleas in law. The first alleged an infringement of Article 24 of Regulation No 4253/88, in that the Commission cannot proceed by extrapolation to the financial corrections provided for by that article. The second plea, relied on in the alternative, alleged an infringement of Article 24 of Regulation No 4253/88 and Article 4(3) TEU, in that it had not been shown that the management, control or auditing system was insufficient in relation to the amended contracts concerned. The third plea, also relied on in the alternative, alleged an infringement of Article 24 of Regulation No 4253/88, in that the sample of projects used by the Commission to apply financial corrections by extrapolation was not representative of the operational programmes in question. The fourth plea alleged an infringement of the first subparagraph of Article 3(1) of Regulation No 2988/95 and the reasonable time principle, in that the Commission exceeded the time-limit for applying the financial corrections at issue.

43 By the judgment under appeal, the General Court rejected successively the fourth, first, second and third pleas in law, and accordingly dismissed the actions in their entirety.

Forms of order sought before the Court

44 In its appeal, the Kingdom of Spain claims that the Court should:

— set aside the judgment under appeal;

— give final judgment in the proceedings and annul the contested decisions; and

— order the Commission to pay the costs.

45 The Commission contends that the Court should:

— dismiss the appeal; and

— order the Kingdom of Spain to pay the costs.

The appeal

Arguments of the parties

46 In support of its appeal, the Kingdom of Spain puts forward two grounds of appeal. The first alleges an error of law on the part of the General Court, in that it found that Article 24(2) of Regulation No 4253/88 is the legal basis for the Commission to apply financial corrections based on extrapolation. By its second ground of appeal, the Kingdom of Spain criticises the General Court for errors of law in the review of the reliability, consistency, relevance and appropriateness of the extrapolation made use of by the Commission in the present case, in that, first, the population of the sample used was determined on the basis of the expenditure declared rather than the assistance granted, secondly, expenditure which was not co-financed and had been withdrawn by the Kingdom of Spain was taken into account in that connection, thirdly, the sample used by the Commission was characterised by a lack of homogeneity and, fourthly, the sample did not present a sufficient level of reliability.

47 The Commission submits essentially that the first ground of appeal should be declared unfounded. As regards the second ground of appeal, this raises questions of fact, so that it should be rejected as inadmissible or, in any event, as unfounded.

Findings of the Court

48 In order to rule on the present appeal, it should be noted at the outset that in the judgment under appeal the General Court ruled on the actions for annulment brought by the Kingdom of Spain by dismissing them after declaring unfounded the four pleas in law put forward in support of the actions by the Kingdom of Spain.

49 More particularly, the General Court started by considering the fourth plea in law, which alleged essentially that the contested decisions had not been adopted by the Commission in what could be considered a reasonable time. In paragraph 56 of the judgment under appeal, however, it rejected that plea as unfounded. By so doing it accepted that the contested decisions were formally correct.

50 However, it follows in this respect from the reasoning in paragraphs 56 to 89 and 93 and 94 of the judgments in *Spain* v *Commission* (C-192/13 P, EU:C:2014:2156) and *Spain* v *Commission* (C-197/13 P, EU:C:2014:2157) that the adoption of a financial correction decision by the Commission has since 2000 been subject to compliance with a time-limit laid down by law, and that the time-limit varies according to the applicable legislation.

51 The Court considers that, in the present state of EU law, there is no reason to cast doubt on that case-law, which is on the contrary applicable to the present case.

52 Thus, in accordance with Article 100(5) of Regulation No 1083/2006, the Commission is to take a decision on the financial correction within six months of the date of the hearing, and if no hearing takes place the six-month period begins to run two months from the date on which the Commission sent the letter of invitation.

53 It follows from the second paragraph of Article 108 of Regulation No 1083/2006 that Article 100 of that regulation was applicable from 1 January 2007, including for programmes earlier than the period 2007 to 2013.

54 In the present case, the hearings of the Kingdom of Spain took place on 2 and 3 July 2008 for the operational programme 'Andalusia', on 22 and 23 January 2009 for the operational programme 'Basque Country' and on 4 and 5 November 2008 for the operational programme 'Comunidad Valenciana'. By contrast, the Commission did not adopt the contested decisions relating to those programmes until 30 November 2009, 23 December 2009 and 28 January 2010 respectively.

55 Consequently, the Commission did not comply in the present case with the six-month time-limit laid down in Article 100(5) of Regulation No 1083/2006.

56 Moreover, it follows from the Court's case-law, first, that failure to comply with the procedural rules relating to the adoption of an act adversely affecting an individual, such as a failure by the Commission to take the contested decision within the time-limit defined by the EU legislature, constitutes an infringement of essential procedural requirements (see judgments in *United Kingdom* v *Council*, 68/86, EU:C:1988:85, paragraphs 48 and 49; *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 103; and *Spain* v *Commission*, C-197/13 P, EU:C:2014:2157, paragraph 103), and, secondly, that if the Court of the European Union finds, on examining the act at issue, that it was not regularly adopted, it must draw the necessary conclusions from the infringement of an essential procedural requirement and, consequently, annul the act vitiated by that defect (see judgments in *Commission* v *ICI*, C-286/95 P, EU:C:2000:188, paragraph 51; *Commission* v *Solvay*, C-287/95 P and C-288/95 P, EU:C:2000:189, paragraph 55; *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 103; and *Spain* v *Commission*, C-197/13 P, EU:C:2014:2157, paragraph 103).

57 It should be recalled here that, according to settled case-law, apart from special cases such as those provided for by the rules of procedure of the Courts of the European Union, those courts may not base a decision on a plea raised by the court of its own motion, even if it involves a matter of public policy, without first inviting the parties to submit their observations on that plea (see judgments in *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 57, and *OHIM* v *National Lottery Commission*, C-530/12 P, EU:C:2014:186, paragraph 54).

58 As regards the question of the time-limit within which a decision on a financial correction must be adopted, it must be observed that, in connection with the cases of *Spain* v *Commission* (C-192/13 P, EU:C:2014:2156) and *Spain* v *Commission* (C-197/13 P, EU:C:2014:2157), which concerned substantially identical questions of fact and law, the Kingdom of Spain and the Commission have already had an opportunity to argue the point. Furthermore, in those two cases the Court had requested the parties to concentrate their arguments on this point.

59 Moreover, that line of case-law has since been confirmed on several occasions by the Court (see judgments in *Spain* v *Commission*, C-429/13 P, EU:C:2014:2310, and *Spain* v *Commission*, C-513/13 P, EU:C:2014:2412).

60 It follows, first, that the Commission had an adequate opportunity to submit, as part of an adversarial procedure, its pleas in law and arguments on the scope of the time-limit laid down in Article 100(5) of Regulation No 1083/2006 and, secondly, that the Court's case-law on the interpretation of that provision must be regarded as settled.

61 It must therefore be found that the present case constitutes a special case for the purposes of the case-law cited in paragraph 57 above, and that there is no need to invite the parties to submit observations on this plea.

62 In those circumstances, it must be concluded that the Commission adopted the contested decisions without complying with the statutory time-limit laid down by a Council regulation.

63 Consequently, by dismissing the actions brought by the Kingdom of Spain instead of penalising the infringement of essential procedural requirements vitiating the contested decisions, the General Court erred in law.

64 The judgment under appeal must therefore be set aside.

The action at first instance

65 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then itself give final judgment in the matter, where the state of the proceedings so permits.

66 In the present case, the Court has the necessary information to give final judgment on the actions for annulment of the contested decisions brought by the Kingdom of Spain before the General Court.

67 In this respect, it suffices to state that, for the reasons set out in paragraphs 50 to 63 above, the contested decisions must be annulled for infringement of essential procedural requirements.

Costs

68 Under Article 184(2) of the Court's Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

69 Article 138(1) of those rules, which is applicable to appeal proceedings by virtue of Article 184(1) of those rules, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Kingdom of Spain has been successful on appeal and the actions before the General Court have been upheld, the Commission must, in accordance with the forms of order sought by the Kingdom of Spain, be ordered to bear its own costs and to pay those incurred by the Kingdom of Spain, both at first instance and on appeal.

On those grounds, the Court (First Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union in *Spain* v *Commission* (T-65/10, T-113/10 and T-138/10, EU:T:2013:93);**

2. **Annuls Commission Decisions C(2009) 9270 of 30 November 2009, C(2009) 10678 of 23 December 2009 and C(2010) 337 of 28 January 2010 reducing the assistance from the European Regional Development Fund (ERDF) granted respectively under the operational programme 'Andalusia' falling within Objective 1 (1994-1999) pursuant to Commission Decision C(94) 3456 of 9 December 1994, the operational programme 'Basque Country' falling within Objective 2 (1997-1999) pursuant to Commission Decision C(1998) 121 of 5 February 1998, and the operational programme 'Comunidad Valenciana' falling within Objective 1 (1994-1999) pursuant to Commission Decision C(1994) 3043/6 of 25 November 1994;**

3. **Orders the European Commission to pay the costs incurred by the Kingdom of Spain and to bear its own costs, both in the proceedings at first instance and on appeal.**

[Signatures]